IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO.32 OF 2003

Shri Bashir Shaikh Kasim,
of major age, Indian National,
resident of Flat no.312,
Altess Menor, IIIrd floor,
Opp. Adarsh Colony Road,
Caranzalem,
Panaji,Goa ... APPELLANT

VERSUS

Smt. Zaitun Bi,
of major age, Indian National,
resident of House no.300,
Boca-de-Vaca, Off.Dada
Vaidya Road,
Panaji, Goa ...RESPONDENT.

Shri M.S. Joshi, Advocate for the Appellant.

Shri M. Amonkar, Advocate for the Respondent.

CORAM : F.I. REBELLO,J.

DATED : JUNE 5, 2003.

ORAL ORDER

It is an unfortunate case where the mother had to file a suit against the Appellant herein, her son. There is no dispute that the premises wherein the disputed business is going on stands in the name of the Respondent herein. In respect of that, the only contention of the Appellant is that he had made a contribution of about Rs.80,000/-. The rest of the monies have come from the Plaintiff and others.

2. The case of the Respondent was that a

Gymnasium was started therein. The Appellant, her son, was then unemployed was asked to help. It is contended that their business was of the proprietary concern of the Respondent and the Appellant had no right in the same. Application for interim relief was taken out.

The Appellant filed his Written Statement and also reply and contended that there was a partnership between himself, his mother and father. The deed of partnership relied upon is not registered. It is further his case that accounts used to be prepared, but admittedly, none of the documents have either the Respondent or her husband appended their signatures.

3. The learned trial Court, after considering the material on record, came to the conclusion that the Respondents herein have made out a strong prima facie case and that the Appellant herein though claiming as a partner, had opened an account with the Dena Bank showing himself as sole proprietor of the Gymnasium. Considering the fact that the ownership of the premises belongs to the Respondent and the other material on record, the trial Court arrived at the conclusion that this would be a fit case where injunction should be

granted in favour of the Respondent and against the Appellant.

4. The learned Counsel for the Appellant took me through the various pleadings to point out that the Order of the trial Court is liable to be set aside. The Appellant has not been able to produce any corroborative evidence to show that a partnership has come into existence except for the documents to which he is a party. The Respondent is not a party to those documents. On the contrary, the Respondent, his mother, has denied the existence of partnership. Apart from that, there is no supporting evidence that accounts were prepared annually and signed by the partners of the business. More so and importantly, the Appellant herein has now started an independent business at Porvorim.

5. On perusing the judgment of the trial Court, I find that the trial Court has addressed itself to the material on record and applied the correct tests for grant of injunction and after considering that material has passed the Order. Though the Order may not be very happily worded, the view taken by the trial Court is a possible view.

6. Once that be the case, the Appeal From

Order along with the Civil Application are rejected.

F.I. REBELLO,J.

ac.